

Planning Department

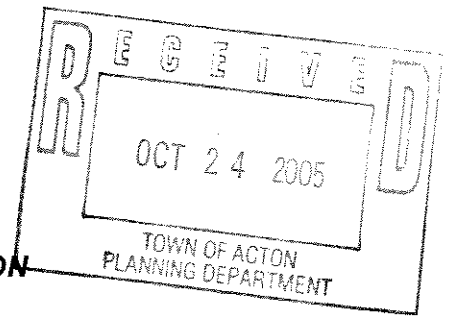
TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov


MEMORANDUM

To: Planning Board **Date:** October 25, 2005
From: Roland Bartl, AICP, Town Planner *RB*
Subject: Ellsworth Village – Clarification for Building Commissioner

Please find attached a request from the Building Commissioner for clarification of the Planning Board's special permit language regarding large construction vehicle access. Also, attached is related correspondence. I believe that the requested clarification is in the Planning Board's 10/14/05 response to Mr. Tom Lemire. For further help, I would add that if, in the truck driver's judgment, the Great Road access is unsafe or may cause damage to the vehicle, then the 12-wheel dump truck is authorized to use Brabrook Road. Clearly, any two-axle vehicle is small and nimble enough to negotiate the Great Road construction access and should be categorically excluded from Brabrook Road.

TOWN OF ACTON
Building Department
INTERDEPARTMENTAL COMMUNICATION



To: Planning Board **Date:** October 24, 2005
Cc: Board of Selectmen
From: Garry A. Rhodes, Building Commissioner 
Subject: Ellsworth Village Special Permit #05-01

I am requesting a clarification of one of the Conditions of Special Permit #05-01. Condition 3.2.1 reads in part.

"Construction and contractor vehicle access to the site shall be restricted to the emergency access route via 133 Great Road shown on the Plan. Construction and contractor vehicle access via Brabrook Road shall be prohibited, except for work actually performed on Brabrook, Flagg, and Pope Roads as approved hereunder and except for extra large vehicles that cannot safely negotiate the access from Great Road."

The problem centers around what vehicles are intended to access the site from Great Road or from Brabrook Road. I have received numerous complaints from neighbors about the use of Brabrook Road to access the site. On October 13, I issued a Cease and Desist order when I observed a 12-wheel dump truck accessing the site from Brabrook Road. I felt the truck was not an "extra large vehicle that cannot safely negotiate the access from Great Road". Mr. Fenton disputes my opinion. In fairness to both Mr. Fenton and the neighbors I am seeking a clarification. If the Board finds the condition is appropriate, I fully intend to file a criminal complaint the next time I observe such a vehicle accessing the site from Brabrook Road.



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

Building Department

October 24, 2005

Ellsworth Village, LLC
PO Box 985
W. Acton MA 01720

Re: Cease and Desist Order dated October 13, 2005
Response dated October 18, 2005

Dear Mr. Fenton,

After further review, I agree the work on the box culvert is within the layout of the uncompleted Brabrook Road. The Planning Board Decision did not distinguish between the work in the town accepted Brabrook Road and the yet to be accepted Brabrook Road layout. I therefore, agree the work in the yet to be accepted Brabrook layout including the new turn around and culvert, as shown on the plan, can be accessed from Pope Road and Brabrook Road.

You have alleged you cannot safely access the site by the emergency access route via 133 Great Road. The vehicle in question is a 12-wheel dump truck. I have received numerous complaints about these vehicles using Brabrook Road. In fairness to both you and the residents I will seek clarification from the Planning Board.

I find the September 29th letter to the residents of Brabrook and Flagg Roads to satisfy the condition 3.2.5. If any changes occur a subsequent follow-up letter may be necessary. Please send me any follow-up letters.

You contend that you have not violated the hours of operation as set forth in condition 3.2.1. Please find attached a police report that seems to apply otherwise.

Sincerely,


Garry A. Rhodes
Building Commissioner

Cc. Board of Selectmen
Planning Board

Roland Bartl

From: Authentic Homes Inc [authhomes@msn.com]
Sent: Wednesday, October 26, 2005 10:56 AM
To: Roland Bartl
Subject: RE: truck access to Ellsworth

Roland,

Your description of the wheel arrangement is correct for the tri-axles. The trouble occurs when the tag axle (the axle which lifts up and down) gets hung-up while negotiating the construction access road. The tag axle is not a drive axle, so the rear axles are lifted-up and spin -- creating stress and potential damage to the trucks.

Donna

*From: "Roland Bartl" <rbartl@acton-ma.gov>
To: "Donna M. Cisek (E-mail)" <authhomes@msn.com>
Subject: truck access to Ellsworth
Date: Tue, 25 Oct 2005 17:34:47 -0400*

Jim:

Garry Rhodes has asked the Planning Board for clarification on what they meant with "extra large vehicles". In your reply to Garry Rhodes' cease and desist order, you mention 12-wheel/tri-axle trucks having problems on the Great Road construction access. Just so I understand what these vehicles are, please tell me more about their wheel arrangements, as I may need that for the Planning Board meeting on 11/8. I figure there are three axles under the bin (2 with 4 wheels and 1 with 2 wheels) plus there is another axle with 2 wheels under the cab. So we actually have four axles on such vehicles. If this incorrect, please advise and set me straight.

Thanks -

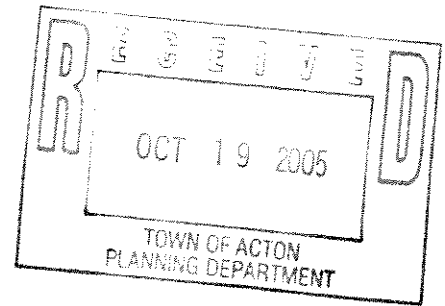
*Roland Bartl, AICP
Town Planner, Town of Acton
472 Main Street
Acton, MA 01720
978-264-9636*

10/26/2005

Ellsworth Village, LLC
P.O. Box 985 W. Acton, MA 01720
978-266-9751

By Certified Mail Article No. 7000 1670 0008 1931 6933

October 18, 2005



Town of Acton
Building Department
472 Main Street
Acton, MA 01720

Re: Cease and Desist Order dated October 13, 2005
Violations of Ellsworth Village Special Permit #05-01

Per the Cease and Desist Order referenced above, Ellsworth Village, LLC, would like to clarify the details of work being performed on and around Brabrook Road.

The activity you observed on October 12, 2005, was directly related to the completion of culvert work for the Brabrook Road extension; not for the Ellsworth Village project. We feel that we are not in violation of the Order of Conditions since this work is required for Brabrook Road.

The 12-wheel dump truck observed delivering material is a tri-axle truck. We have attempted to deliver material with tri-axle dump trucks using the construction access. However, due to the steep grade of that access road the frame on the tri-axes twist; possibly damaging the equipment. Because of this, the tri-axle trucks are required to use Brabrook Road for access. We have agreed that all other smaller vehicles and single-axle trucks will use the construction entrance. However, a tri-axle dump truck is not a single-axle truck.

We continue to insist that construction work is not being started before the hours as stated in the Order of Conditions. We have observed private contractors working for residents in the neighborhood. Perhaps the early truck traffic is related to these private jobs.

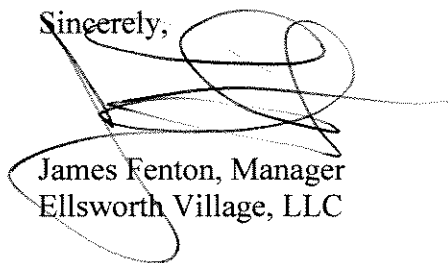
Finally, a letter was mailed to all Brabrook Road and Flagg Road residents on September 29, 2005, detailing our construction schedule (see copy attached). We are a little behind schedule due to the weather and will be mailing an update within the next week.

Page Two
Town of Acton Building Department
October 18, 2005

It remains our goal to work with the Town of Acton to successfully complete this project as well as maintaining an open communication with the neighbors to help them understand the construction process. We will continue to abide by the Order of Conditions set forth by the Acton Planning Board.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Fenton', is written over the printed name. The signature is stylized with loops and a long horizontal stroke extending to the right.

James Fenton, Manager
Ellsworth Village, LLC

Cc: Acton Planning Board
Acton Board of Selectmen

Ellsworth Village, LLC
P.O. Box 985 W. Acton, MA 01720
978-266-9751

September 29, 2005

To: Ellsworth Village Abutters

From: Jim Fenton, Ellsworth Village, LLC

Re: Status of Road Work

Following is an update regarding the on-going roadwork:

1. Work is continuing on the new water main along Brabrook Road. There is approximately 200 feet left to finish and should be completed within the next two to three days.
2. The new water services will be started immediately after the water main completion.
3. A hot-top patch will be laid after the water services are complete.
4. Beginning Monday, 10/3, Keyspan will be installing approximately 300 feet of new gas line on Brabrook Road from Flagg Road leading into the project. Keyspan should complete their work by the end of next week. A hot-top patch will be laid after Keyspan finishes their work.
5. By mutual agreement between the Town of Acton Engineering Department and Ellsworth Village, LLC, Brabrook Road will be cleaned-up and a binder course and hot-top patch will remain in place through the Winter. In the Spring of 2006, weather permitting, a final pavement coat, sidewalks and berm will be installed.

Please feel free to contact Jim Fenton or Donna Cisek at the phone number above if you need additional information.

Thank you.

Roland Bartl

From: Roland Bartl
Sent: Friday, October 14, 2005 4:31 PM
To: 'tom.lemire@comcast.net'
Cc: Board of Selectmen; Planning Board; Garry Rhodes; 'Donna M. Cisek (E-mail)'
Subject: RE: Ellsworth Village Special Permit Violations

Tom:

In response to your 10/11 letter, the Planning Board has asked me to forward you this reply from the Chairman:

*Roland Bartl, AICP
Town Planner, Town of Acton
472 Main Street
Acton, MA 01720
978-264-9636*

Dear Mr. Lemire:

Let me restate the conditions in the Ellsworth Village special permit regarding construction hours and access:

Restrictions on Construction Activities**3.2.1 The following restrictions on construction activities shall apply:**

- Construction for all work shown on the Plan shall be limited to the hours between 7:00 AM and 5:00 PM Monday through Friday. Work on the Site itself, but not in any public way, may also be conducted between 9:00 AM and 4:00 PM on weekends.
- Blasting, if necessary, shall be limited to the hours between 9:00 AM and 5:00 PM Monday through Friday.
- Construction and contractor vehicle access to the Site shall be restricted to the emergency access route via 133 Great Road shown on the Plan. Construction and contractor vehicle access via Brabrook Road shall be prohibited, except for work actually performed on Brabrook, Flagg, and Pope Roads as approved hereunder and except for extra large vehicles that cannot safely negotiate the access from Great Road.

At the Planning Board meeting of 10/11 the Board reminded the developer once again of these conditions. He in turn stated unequivocally that he is doing the very best he can to make sure all his workers and contractors adhere to these conditions. He also rejected any notion that work is beginning before 7:00 AM. The Planning Board placed these condition on the special permit in the hope and expectation that the developer would do his utmost to comply with them. However, the Board is also realistic enough to understand that the Town cannot monitor compliance around the clock. The Board also understands that, while the developer probably can control the hours of construction, his ability to control access is somewhat more limited. In short, it is the Board's expectation that the conditions will be largely followed, but that some deviations are inevitable.

In the end, all that the developer can do is to constantly remind his workers and subcontractors to adhere by the construction access condition, but the judgment on which access to use ultimately must remain with the licensed driver of the vehicle considering the vehicle itself, the load carried, and safety. Since you mention flatbeds, please know that the Board fully expected flatbeds to use Brabrook Road because, due to the steep slope and abrupt grade changes, they could easily get "hung up" on the emergency access. The same is true for other vehicles with large, heavy deliveries, wide loads, etc. These are exempt as stipulated in the decision. However, we do expect that the developer will exert reasonable access control for smaller vehicles or empty equipment as appropriate, and general construction service vehicles, or private cars and pick-ups of workers and contractors. To that end, the developer has offered to post appropriate signs on Brabrook Road, and the Board has encouraged him to pursue this with the appropriate Town authorities.

10/25/2005

In closing, today the Board was copied on a "Cease and Desist Order" issued by the Building Commissioner for observed violations of the decision's conditions. Please believe that the intent of the Board was and continues to be, to ensure the safety of the residents of your neighborhood while this project is being constructed.

Sincerely,

Greg Niemyski, Chairman
Acton Planning Board

copies to BOS, G. Rhoades, TM, J.B. Fenton

-----Original Message-----

From: tom.lemire@comcast.net [mailto:tom.lemire@comcast.net]
Sent: Tuesday, October 11, 2005 9:32 AM
To: Planning Board
Cc: Board of Selectmen; tom.lemire@comcast.net
Subject: Ellsworth Village Special Permit Violations

October 11, 2005

Acton Planning Board

Acton Town Hall
472 Main Street
Acton MA 01720

Members of the Acton Planning Board,

I wish to call your attention to repeated violations of the Ellsworth Village Senior Residence Special Permit, issued by the board on April 26, 2005.

Section 3.2.1 of the Special Permit clearly states that "Construction and contractor vehicle access via Brabrook Road shall be prohibited, except for work actually performed on Brabrook, Flagg, and Pope Roads as approved hereunder and except for extra large vehicles that cannot safely negotiate the access from Great Road."

Despite this condition, construction vehicles have frequently been using Brabrook Road to access the Ellsworth Village parcel, often during prime school bus hours. These vehicles have ranged from dump trucks to flatbeds loaded with pre-formed concrete materials and heavy equipment. The vehicles are capable of using the Great Road entrance, and in some cases have been re-directed to do so. This illegal construction traffic has resulted in traffic delays, roadway damage and, most importantly, serious safety risks to the residents of Brabrook and Flagg Roads.

Section 3.2.1 of the Special Permit also specifies that "Construction for all work shown on the Plan shall be limited to the hours between 7:00 AM and 5:00 PM Monday through Friday." Activity with heavy equipment can be heard frequently as early as 6:00 AM.

Please take whatever steps are necessary to enforce the conditions of the Special Permit and ensure the peace and safety of the Brabrook and Flagg Road neighborhood.

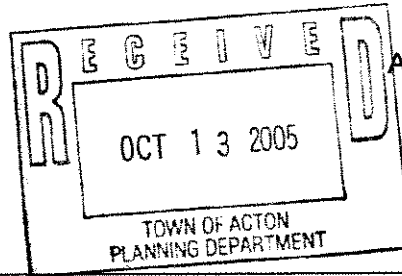
Respectfully,

Tom Lemire
5 Brabrook Road, Acton

10/25/2005



Building Department



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

October 13, 2005

BY CERTIFIED MAIL /RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL
7003 0500 0000 8144 3841

Ellsworth Village LLC
C/o James D. Fenton
PO Box 985
Acton MA, 01720

Michael J. Jeanson
12 Kennedy Lane
Acton, MA 01720

125-135 Great Rd. Realty Trust
C/o Robert R. Moran & Richard Warren Trustees
171 Great Road
Acton, MA 01720

Re: **CEASE AND DESIST ORDER**
Violations of Ellsworth Village Special Permit #05-01

Dear Sirs:

According to Ellsworth Village Senior Residence Special Permit #05-01 issued by the Town of Acton Planning Board you are owners of the permit and land subject thereof. You are hereby **ORDERED** to immediately **CEASE AND DESIST** the use of Brabrook Road in violation of **CONDITION 3.2.1**. In addition, you are hereby **ORDERED** to forthwith notify the residents on Brabrook and Flagg Roads of your work schedule on said roads as required by **CONDITION 3.2.5** with a copy forwarded to me.

On October 12, 2005 at approximately 3:00 PM, I responded to a complaint of construction workers parking along Brabrook Road, dump trucks delivering material to the site and a concrete truck delivering product. I observed a personal vehicle of a concrete worker parked at the end of Brabrook Road along with a second vehicle hauling concrete forms. Both vehicles exited the site using Brabrook Road. I also observed what I believed to be a 12 wheel dump truck delivering material to your site on Brabrook Road. The work being done by these workers was on a box culvert located on the site entrance, not associated with work on Brabrook Road. Today, I again inspected the site and observed concrete workers parked on Brabrook Road. I also observed the construction access for Great Road and noted a dump truck had recently delivered material using that entrance.

Previously Mr. Fenton and I met at the site and discussed what vehicles might be able to use the construction access from Great Road. It was agreed, because of the steep slope of the construction access, full concrete trucks would be unable to use the driveway because of probable spillage of concrete. Tractor trailers would also not be able to use the construction access because of the vertical slope and turning radii. Hauling of construction equipment would have to utilize Brabrook Road because of the vertical grade. Based on what I observed today, unless demonstrated otherwise, all dump trucks must use the construction access. All personal vehicles must use the construction access. Delivery of construction material by single axel trucks, unless demonstrated otherwise must use the construction access. Concrete trucks unless fully loaded must use the construction access. The above does not apply for work being done on Brabrook as required by the permit, which was not the case yesterday and today.

It has also been reported you are starting construction work before the hours as stated in CONDITION 3.2.1. I have not been able to substantiate the claim. I have requested the Acton Police Department respond to these complaints and report to me. As of this date, I have not had any police reports.

You are cautioned if you fail to comply with these stated CONDITIONS, I will seek a criminal complaint in Concord District Court. I will also seek fines in the sum of \$300 per day for each day a violation of a condition is documented. Violation of different conditions will be considered as separate fines. If violations continue, I will also request the Planning Board rescind the permit as provided by CONDITION 3.2.

Sincerely,

A handwritten signature in black ink, appearing to read "Garry A. Rhodes", with a long, sweeping horizontal line extending to the right.

Garry A. Rhodes
Building Commissioner

Cc. Planning Board
Board of Selectmen